

Case Summary

Ronald Walters appeals the trial court's division of property decree in the dissolution of his marriage to Marlene Walters. We affirm in part and reverse in part.

Issue

The sole restated issue is whether the trial court properly ordered Ronald to make an "equalization payment" of \$114,350 to Marlene as part of the property division decree.

Facts

Ronald and Marlene were married in 1965. During their marriage, the parties incorporated a used car business called College Corner Autoplex, Inc. ("College Corner"). Ronald and Marlene each owned fifty percent of the shares in the business. Ronald received enough salary from College Corner during the marriage for both parties to live on, and Marlene did not draw a separate salary.

Marlene filed for divorce in 2001. On December 4, 2002, the trial court ordered dissolution of the marriage but reserved division of the marital property for later resolution. As part of the December 4, 2002 order, the trial court ordered Ronald to pay Marlene \$400 per week in temporary maintenance and to pay household expenses and utilities for the marital residence pending the final division of property. Marlene testified that Ronald failed to pay the maintenance as required, except for one-half of one month.

During the years 2003, 2004, and 2005, Ronald drew salary from College Corner in the amounts of \$113,700, \$104,000, and \$99,000 respectively, or \$316,700 total.¹ During that same time period, Marlene received payments from College Corner totaling \$44,000 for all three years combined.

On March 24, 2006, after conducting an evidentiary hearing, the trial court entered its final order dividing the marital property of the parties. In its order, the trial court entered findings and conclusions that included the following:

1.1. FINDINGS OF FACT

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22. The Court's [December 4, 2002] Decree of Dissolution also served as a provisional order whereby Ron was ordered to pay maintenance to Marlene of \$400 per week and pay her household expenses and utilities while the case was pending. Ron has failed to pay all of the amount ordered. The Court determines Ron is in arrears in household expenses and utilities in the amount of \$5,500.

23. In order to equalize the amounts Ron drew from the business and to balance them with the maintenance Ron was ordered to pay to Marlene during the pendency of this action, the Court awards to Marlene the sum of \$114,350. (Ron's draw $\$316,700 \div 2 = \$158,350$ – Marlene's draw $\$44,000 = \$114,350$.) (includes amounts Marlene would have received as maintenance and which would have been offset against the final property settlement).

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1.2. CONCLUSIONS OF LAW

¹ Ronald argues at length in his brief whether these payments constituted "salary" versus a "corporate draw" or "dividends." We do not see that it makes any substantive difference in this case what the payments are called.

1. The marital property shall be equally divided between the parties and Marlene shall receive an amount which equalizes the amount of income from the parties' business, College Corner Autoplex, during the pendency of this action.

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15. Marlene is awarded a cash equalization payment for corporate overdraws by Ron in the amount of \$114,350. . . .

App. pp. 4-6, 11. Not counting this payment, the trial court awarded Marlene 50.3% of the marital estate and Ron 49.7%. In other words, the \$114,350 "equalization payment" is separate from and exceeds the value of the marital estate as found by the trial court. Ronald now appeals the trial court's award of this payment to Marlene.²

Analysis

Indiana law requires that marital property be divided in a "just and reasonable manner" Fobar v. Vonderahe, 771 N.E.2d 57, 58 (Ind. 2002) (quoting Ind. Code § 35-15-7-4). It also provides that "an equal division of the marital property between the parties is just and reasonable." Id. at 58-59 (quoting I.C. § 31-15-7-5). This presumption may be rebutted by evidence of each spouse's contribution to the acquisition of the property, the extent to which the property was acquired before the marriage or by inheritance, the economic circumstances of each spouse, the conduct of the parties relating to the disposition or dissipation of assets, and each spouse's earning ability. Id. at 59 (citing I.C. § 31-15-7-5). As part of a marital property division order, a trial court

² Ronald does not challenge the trial court's separate award of \$5,500 to Marlene for household expenses and utilities he failed to pay as ordered while this case was pending.

may require “either spouse to pay an amount, either in gross or in installments, that is just and proper” I.C. § 31-15-7-4(b)(2). Although the question of whether a trial court’s division of marital property was just and reasonable is in some sense an issue of law, it is highly fact sensitive and subject to an abuse of discretion standard. Fobar, 771 N.E.2d at 59.

The trial court here also entered findings of fact and conclusions thereon, pursuant to Indiana Trial Rule 52(A), at Marlene’s request. We cannot set aside the trial court’s findings or judgment unless clearly erroneous, and we will not reweigh the evidence or judge the credibility of the witnesses. Morfin v. Estate of Martinez, 831 N.E.2d 791, 801 (Ind. Ct. App. 2005). In reviewing a judgment entered with requested findings and conclusions, we must first decide whether the evidence supports the findings. Id. Second, we determine whether the findings support the judgment; in doing so, we must construe the findings liberally in support of the judgment. Id. A judgment is clearly erroneous only if it is unsupported by the findings of fact and conclusions thereon. Id.

We conclude that we must reverse the trial court’s award of a \$114,350 judgment in favor of Marlene. It has been held, “A property division under I.C. § 31-15-7-5 cannot exceed the value of the marital assets without being considered an improper form of maintenance and an abuse of discretion.” Pitman v. Pitman, 721 N.E.2d 260, 266 (Ind. Ct. App. 1999), trans. denied (citing In re Marriage of McManama, 272 Ind. 483, 485, 399 N.E.2d 371, 372 (1980) and In re Marriage of Sloss, 526 N.E.2d 1036, 1038 (Ind. Ct. App. 1988)). This is true even if the trial court properly found that a spouse dissipated marital assets. See id. at 267.

Here, the trial court found the total value of the marital estate to be \$2,807,000. The award of \$114,350 to Marlene is separate from that amount. Even if we were to assume without deciding that Ronald’s “draws” from College Corner in 2003, 2004, and 2005 constituted dissipation of a marital asset, the trial court was not thereby empowered to award a monetary judgment to Marlene in excess of the value of the marital estate. See id. The proper remedy would have been for the trial court to deviate from an equal division of the marital property to account for the dissipation. See id.

It appears, from the trial court’s findings, that it believed there was an arrearage with respect to Ronald’s temporary maintenance obligation to Marlene, although the findings are not clear on this point.³ Although a provisional spousal support obligation terminates upon entry of a final decree, a trial court may order a spouse who failed to make required provisional support payments to pay any arrearage as part of the final decree. See Crowley v. Crowley, 708 N.E.2d 42, 57 (Ind. Ct. App. 1999). That may have been what the trial court was intending to do here. However, unlike the issue of unpaid household expenses, the trial court made no specific finding of the amount of any arrearage Ronald owed for failing to pay maintenance. We note that if we were to assume that Ronald failed to pay any maintenance at \$400 per week for three years, the total amount of the arrearage would be \$62,400—well below the \$114,350 awarded to

³ For example, the trial court’s finding that “Ron has failed to pay all of the amount ordered,” apparently referring to maintenance, household expenses, and utilities combined, could mean either that he failed to pay any of the amount ordered or that he paid some, but not all, of the amount ordered. App. p. 7. Also, immediately after this sentence the trial court placed a specific dollar amount on the arrearage for household expenses and utilities, but not for maintenance.

Marlene.⁴ In sum, in the absence of any trial court finding as to the amount of any temporary maintenance arrearage Ronald owed to Marlene, its findings do not support a judgment awarding \$114,350 to Marlene above and beyond the value of the marital estate.

Conclusion

The trial court lacked the authority to award a \$114,350 judgment to Marlene, which sum exceeds the total value of the marital estate, regardless of whether Ronald's "draws" from College Corner constituted dissipation of a marital asset. Furthermore, that judgment is not supported by sufficient findings regarding the amount of any temporary maintenance arrearage that Ronald might have accrued. We reverse the final marital property division decree to the extent it awards Marlene \$114,350 and otherwise affirm that decree.

Affirmed in part and reversed in part.

BAILEY, J., and VAIDIK, J., concur.

⁴ 3 years x 52 weeks x \$400 = \$62,400.